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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 339.

WILLIAM H. GLEASON, LIEUTENANT GOVERNOR OF THE STATE OF FLORIDA, PLAINTIFF IN ERROR,

vs.

THE STATE OF FLORIDA EX RELATIONE THE ATTORNEY GENERAL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF FLORIDA.

FILED DECEMBER 10, 1869.

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1 *Writ of error to the Supreme Court.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the supreme court of the State of Florida, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said supreme court of the State of Florida, before you, between the State of Florida, upon the relation of the attorney general, Almon R. Meek, who prosecutes in the name and by the authority of said State, and William H. Gleason, li'ut. governor of the State of Florida, a manifest error hath happened to the great damage of the said William H. Gleason, as by his complaint appears, and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given,

2 [Filed Dec. 15th, 1868. Chs. H. Foster, C. sup C., per Chs. Lenmore, dep C. sup C.]

3 that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday in December, in the year of our Lord one thousand eight hundred and sixty-nine, in the said Supreme Court to be then and there held, that, the records and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this fifteenth day of December, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independance of the United States the ninety-third.

[SEAL.] SHERMAN CONANT,
Clk of said Court.

4 (Indorsed:) Wm. H. Gleason, li'ut. governor of the State of Florida, vs. the State of Florida, on the relation of Almon R. Meek, attorney general of said State. Copy of a writ of error lodged, in pursuance of a statute of the United States made and provided, for the above-named State of Florida, affi'm'd, defendant in error. D. S. Walker, att'y for pl'ff in error.

Filed Dec. 15th, 1868.

CHS. H. FOSTER, *C. Sup. C.*
Per CHS. KENMORE,
Dep. C. Sup. C.

Filed 22d December, 1869.

D. W. M.

5 United States of America to the State of Florida, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, D. C., on the first Monday of December next, pursuant to writ of error filed in the clerk's office of the supreme court of the State of Florida, upon the relation of the attorney general, Almon R. Meek, who prosecutes in the name and by the authority of said State, wherein William H. Gleason, lieut. governor, is plaintiff, and the State of Florida defendant in

error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness my hand this 21st day of December, A. D. 1868.

SAM. F. MILLER,
Asso. Jus. Sup. C. U. S.

I, Charles H. Foster, clerk of the supreme court of the State of
6 Florida, do hereby certify that the above is [is] a true and correct copy of an original writ on file in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of the said supreme court, at Tallahassee, this 9th day of December, A. D. 1869.

[SEAL.]

CHAS. H. FOSTER,
Clerk of Supreme Court State of Florida.

7 (Indorsed:) Gleason vs. State of Florida. Copy of citation. Filed 22 December, 1869.

8 Pleas in the city of Tallahassee before the honorable the supreme court of the State of Florida, at a special and extra term thereof, held on the day of , in the year of our Lord one thousand eight hundred and sixty-eight, in a certain cause lately depending therein, wherein Almon R. Meek, attorney general of the State of Florida, prosecuted in behalf of the State of Florida, and wherein William H. Gleason was respondent, and which said extra and special term of said court was held by virtue of, and in accordance with, an order of said court before that time made, in the words and figures following, to wit:

Supreme court State of Florida.—In vacation, Nov. 11th, 1868.

It is ordered that an extra and special term of the supreme court of the State of Florida be convened at the court-house in the capitol in Tallahassee, on Wednesday, the 18th day of November, A. D. 1868, at eleven o'clock in the forenoon, the public welfare and the cause of justice, in our judgment, requiring the holding of such term.

E. M. RANDALL, *C. J.*

I consent to the above order.

JAMES D. WESTCOTT, JR.,
Associate Justice of the Supreme Court.

9 Be it remembered that thereafter and during said term, to wit, on the day of November, in the year of our Lord one thousand eight hundred and sixty-eight, Almon R. Meek, attorney general of the State of Florida, in behalf of the State of Florida, appeared, and made his certain motion in said court in the words and figures following, to wit:

At an extra and special term of the supreme court of the State of Florida, November 19th, 1868.

Ex parte State of Florida, ex re. Almon R. Meek, attorney general of the State of Florida.

And now the said attorney general moves the court for leave to file

an information in the nature of a quo warranto against William H. Gleason, exercising the functions, &c., of the office of lieutenant governor of the said State, and for due process according to the prayer of said information.

ALMON R. MEEK,
Attorney General.

Leave being granted, he thereupon filed against William H. Gleason an information, in the nature of a quo warranto, in the words and figures following, to wit:

In the supreme court of the State of Florida.

Almon R. Meek, attorney general of the people of the State of Florida, who sues for the said people in this behalf, comes here before the justices of the people of the State of Florida of the supreme court of the same people, on the nineteenth day of November, A. D. 1868,
10 at an extra and special term thereof, and, for the said people, gives the said court here to understand and be informed that William H. Gleason, to wit, in said State, for the space of five months now last past and upwards, has used, enjoyed, exercised, and performed, and still does use, enjoy, exercise, and perform, without warrant or authority, in violation of the existing constitution of said State, the franchise, functions, and powers of the office of lieutenant governor of the people of the State of Florida aforesaid, and has actually presided over the deliberations of the senate of said State, and also done other acts which are authorized and required to be done and performed by the lieutenant governor of the people of said State, and which he alone has a right to do; which said office, and the franchises, functions, and powers thereof, the said William H. Gleason, during all the time aforesaid, usurped, and still does usurp, upon the people aforesaid, to their great damage and prejudice.

And the said attorney general of the said people, who prosecutes as aforesaid for the people aforesaid, further gives the court to understand and be informed that the said William H. Gleason, for the space of five months now last past and upwards, has used and still does use and exercise and enjoy the office and franchise of lieutenant governor of the people of the State of Florida, in violation of the existing constitution of said State, for that by the fourteenth section of the fifth article of said constitution, it is ordained and required that the lieutenant governor shall be elected at the same time and place and in the same manner as the governor, and that his term of office and eligibility shall also be the same as the governor; and by the third section of said fifth article of said constitution it is ordained and required that no person shall be
11 eligible to the office of governor who is not a qualified elector, and who has not been nine years a citizen of the United States, and three years a citizen of the State of Florida, next preceding the time of his election; and for that by said sections and provisions of said constitution, no person is eligible to the office of lieutenant governor who has not been nine years a citizen of the United States, and three years a citizen of the State of Florida, next preceeding the time of his election; and for that heretofore, to wit, the said William H. Gleason, on the first Monday, Tuesday, and Wednesday of May, in the year of our Lord one thousand eight hundred and sixty-eight, was elected to the said office of lieutenant governor of the people aforesaid, and after-

wards, to wit, on the seventh day of July, in the same year, to wit, at Tallahassee, in said State, then and there did take the oath, prescribed by the constitution of said State to be taken by each officer in said State, as a lieutenant governor thereof; he, the said William H. Gleason, then and there being ineligible under the said provisions of the said constitution of said State to the said office of lieutenant governor, for that the said William H. Gleason had not then and there been a citizen of the State of Florida for the full period of three years, then next preceeding said election so as aforesaid held on the said several days in May aforesaid, as is in and by the provisions of said constitution required; and so the attorney general aforesaid does give the court here to understand and be informed that the said William H. Gleason, during all the time aforesaid, has usurped, and still does usurp, upon the people aforesaid, the said franchise, functions, and powers of the said office of lieutenant governor of the people aforesaid, to their great damage and prejudice.

12 Whereupon the said attorney general prays the advice of this court in the premises and due process of law against the said William H. Gleason in this behalf to be made, to answer to the said people by what warrant or authority he claims to use, enjoy, exercise, and perform the franchise, functions, and powers aforesaid.

ALMON R. MEEK,
Att'y General of the State of Florida.

Whereupon an order in the premises was made by the court, in the words and figures following, to wit:

In the supreme court State of Florida.

IN THE MATTER OF INFORMATION BY THE ATT'Y GENERAL
vs.
WILLIAM H. GLEASON.

The attorney general having moved the court for leave to file an information in the nature of a quo warranto against William H. Gleason, lieutenant governor of the State of Florida, it is ordered that leave be, and is hereby, granted to said attorney general to file said information; and, on further motion in that behalf, it is also ordered that a rule be, and is hereby, granted against the said William H. Gleason, requiring him to show cause before this court, on Tuesday morning next, at 10 o'clock a. m., why the said writ of quo warranto prayed for in said information should not issue; and that a copy of this order and of the information aforesaid, duly certified by the clerk, be served on said William H. Gleason, and that the service of said copy of said order and of said information on said Wm. H. Gleason shall be sufficient service of the rule aforesaid.

Upon which said original order is endorsed the following, to wit:

Executed by serving a certified copy of this order and of the
13 information upon William H. Gleason, this 19th day of November, A. D. 1868.

C. J. PORTER,
Dep. Sheriff Supreme Court Florida.

And afterwards, to wit, on the twenty-fourth day of November, in the year of our Lord one thousand eight hundred and sixty-eight, came

William H. Gleason, by his attorneys, H. Bisbee and David S. Walker, and, upon motion of respondent's attorneys, the rule aforesaid was enlarged, and further time given to answer the same, until eleven o'clock a. m., to-morrow, the twenty-fifth day of November, in the year of our Lord one thousand eight hundred and sixty-eight; at which time, upon further motion of respondent's attorneys, the rule was enlarged, and further time given to answer the rule aforesaid, until four o'clock p. m., this day; at which time the rule was again enlarged, upon motion of respondent's attorneys, until to-morrow, the twenty-sixth day of November, at ten o'clock a. m., at which time the respondent, by his attorneys, filed his answer in the words and figures following, to wit:

Supreme court State of Florida.

In answer to the writ issued out of this court commanding William H. Gleason to show cause why a writ of quo warranto should not be issued against him, the said William H. Gleason specially appears and says that he ought not to be made to show by what warrant or authority he claims and enjoys, exercises and performs, the franchise, functions, and powers of lieutenant governor of the State of Florida, by reason of anything contained in the paper purporting to be an information on file in this case—

First. Because the said court has no power or jurisdiction to issue, or cause to be issued, a rule to show cause why a writ of quo war-
14 ranto should not issue against the said William H. Gleason.

Second. Because the said court has no original jurisdiction to grant leave to file an information in the nature of a quo warranto.

Third. Because the said court has no original jurisdiction under the constitution and laws of this State to issue a writ of quo warranto, or to try & determine proceedings thereon.

Fourth. Because the power given to said court, if given at all, by the constitution of this State, to issue writs of quo warranto, cannot be exercised, save as auxiliary to the exercise of its appellate jurisdiction, until the legislature shall have prescribed the mode and manner and cases in which it shall be exercised.

Fifth. Because the said Almon R. Meek, represented in the said rule of this court to show cause as being the attorney general of the State of Florida, is not the attorney general of the said State, nor are the said proceedings instituted or prosecuted by the attorney general of said State; and because the said Almon R. Meek, claiming to exercise the functions and authority of attorney general, was appointed by Harrison Reed, governor of the said State, after he had been impeached by the assembly of said State, and before his acquittal by the senate, and was, therefore, by the constitution of said State, under arrest, and disqualified from performing any of the duties of his office.

Sixth. Because at the time of the institution of the proceedings in this case, and at present, F. A. Dockray was and is the legal attorney general of the State of Florida, he having been appointed to that office by the lieutenant and acting governor of the State, William H. Gleason, after the impeachment of the said Harrison Reed, and before his acquittal by the senate, upon whom, at that time and beforehand, devolved, by the constitution of the State, all the powers and duties of government.

Seventh. Because the motion for leave to file the said paper
15 purporting to be an information is not founded upon any affidavit.

Eighth. Because, if the said court has jurisdiction over informations in the nature of a quo warranto, or over writs of quo warranto, it ought not, in the exercise of its absolute discretion with which it is vested, to grant the writ in this case, for the reason of public policy, & the public interest do not demand or require the issuing of the said writ, but, on the contrary, require that it should be denied.

Ninth. Because Harrison Reed, since his impeachment as aforesaid, has caused the said motion to be made and the proceedings to be instituted from malicious and vindictive motives, and to gratify a spirit of revenge and recrimination against the said Gleason.

Tenth. Because Harrison Reed, at the time when the said William H. Gleason was elected lieutenant governor, knew, by information or otherwise, how long the said Gleason had been a citizen of this State, and because the said Harrison Reed, at the time the said Gleason was nominated for his said office, knew, of his own knowledge or otherwise, how long the said Gleason had been a citizen of this State, and because, with the said knowledge, the said Harrison Reed urged and solicited the nomination of the said Gleason to the office of lieutenant governor, & advocated his election during his election canvass, and voted for his election himself, and has full knowledge of all the facts he has caused to be set forth in the said paper purporting to be an information as the ground for asking the said court to issue the said writ.

Eleventh. Because the said proceeding is recriminatory against the said Wm. H. Gleason, and grew out of the late impeachment of Harrison Reed by the assembly of the State of Florida, the said Harrison Reed charging the said Gleason with having caused and influenced his impeachment as aforesaid.

Twelfth. Because the constitution has given the power to the assembly to impeach the lieutenant governor, and the senate to try
16 and remove from office, and that the said bodies will soon be in session and exercise the said power if deemed necessary.

Thirteenth. Because it would be an improper use of the powers of this court, if it had such power, to grant the said writ for the purposes and motives that have originated this proceeding and appearing herein.

And for reasons above set forth, and divers other reasons, the said William H. Gleason moves that the said rule to show cause why a writ of quo warranto should not issue against him as lieut. governor be discharged, and the proceedings instituted in this case be quashed.

W. H. GLEASON.

Subscribed and sworn to before me this 24th day of Nov. A. D. 1868.

S. CONANT,
Justice of the Peace.

And afterwards, to wit, on the twenty-seventh day of November, in the year of our Lord one thousand eight hundred and sixty-eight, the attorney general prosecuting the said information made and entered his certain motion in the words and figures following, to wit:

At an extra and special term of the supreme court of the State of Florida, Nov. 27th, 1868.

Ex parte State of Florida, ex relatione Almon R. Meek, attorney general of the State of Florida.

Almon R. Meek, attorney general of the State of Florida, who, for

the people of the State of Florida, prosecutes in this behalf, comes here into the said supreme court and moves the said court to strike out from the answer or return made to said rule the causes or grounds
17 therein shown, stated, and set forth, numbered respectively nine, ten, eleven, and thirteen, for irrelevancy and impertinence.

After argument of said motion, the court having taken time to be advised of its judgment in the premises, it was considered by the court that the said motion be granted, and it was ordered that the said causes, numbered respectively as stated in said motion, be stricken out.

Whereupon respondent, by his counsel, moved that the said rule be discharged, and the proceedings be quashed, upon the remaining grounds stated in said answer.

After argument of counsel, it was considered by the court that the matters set up in the answer to the said rule, numbered respectively one, two, three, four, seven, eight, and twelve, were not sufficient answers to the rule, it being considered by the court that it had original jurisdiction in the cause, and that it would exercise no discretion to dismiss a proceeding instituted by the attorney general ex officio, and that the matters therein alleged were not sufficient causes to dismiss said information or to quash the proceedings. After further argument of the fifth and sixth grounds alleged, the court ruled that the parties named therein were de facto officers exercising their duties; that the court took judicial notice of who were public officers, and no other evidence, except a judgment of ouster, could be received collaterally in this proceeding to sustain the facts alleged.

Such judgment not being presented, the court ruled in its absence that said matters could not be collaterally enquired into, and directed that they should be stricken out, and the said motion to quash was denied.

Whereupon the said attorney general made and entered of record his certain motion in the words and figures following, to wit:

18 In the supreme court of the State of Florida.

And now comes Almon R. Meek, attorney general of the State of Florida, who prosecutes in behalf of the people of the State of Florida in the matter of an information in the nature of a quo warranto, filed by the said attorney general in said supreme court, against William H. Gleason, and moves the said court to make the rule nisi, heretofore made in this court, absolute, the remaining causes or grounds shown against said rule, being insufficient; and that, said rule being made absolute, proper process do issue, requiring said Gleason to answer to said information.

ALMON R. MEEK,
Attorney General, State of Florida.

Tuesday, 3 o'clock p. m., December 2d, 1868.

Which motion was granted, and process directed to issue.

Whereupon attorneys for the respondent, in the presence of respondent, waived service of process and appeared generally.

And afterwards, to wit, on the same day, the third day of December, in the year A. D. 1868, respondent, by his attorneys, filed in this court his demurrer in the words and figures following, to wit:

In the supreme court State of Florida.

IN THE MATTER OF THE INFORMATION FILED BY Almon R. Meek, representing himself to be attorney general of the said State,
vs.
WILLIAM H. GLEASON, LIEUT. GOV. STATE OF Florida.

19 And now the said defendant, William H. Gleason, lieutenant governor of the said State, in propria persona, says that the said information is bad in substance, and for cause of demurrer says that—

1st. That the said information is not prosecuted nor instituted as required by the 2d section of art. six of the constitution of the State of Florida.

2d. That there is no cause of action alleged in the said information sufficient in law to sustain the said prosecution against defendant.

W. H. GLEASON.

Sworn & subscribed to before me this 3d day of Dec., A. D. 1868.
CHS. KENMORE,
Dep. Clerk Sup. Court.

And thereupon the said Almon R. Meek, attorney general, filed his joinder in demurrer in the words and figures following, to wit:

Almon R. Meek, attorney general of the State of Florida, says that the information filed by him in this cause is good in substance.

Dec. 3d, 1868.

ALMON R. MEEK.
Att'y Gen'l of the State of Fla.

Petition of William H. Gleason, lieut. gov. State of Florida.

Before any argument was heard upon the demurrer, respondent, by his attorneys, filed a petition with the clerk of this court, in the words and figures following, to wit:

To the honorables the justices of the supreme court of the State of Florida:

Your petitioner William H. Gleason, lieut. gov. of the State of
20 Florida, respectfully represents unto this honorable court that an information in the nature of a quo warranto has been filed in the said court, by leave thereof, on the motion of one Almon R. Meek, representing himself in the said information as the attorney general of the said State.

That upon the filing of the said information as aforesaid a rule nisi was issued by the said court and served upon the said petitioner, requiring the said petitioner to show cause why a writ of quo warranto should not issue against the said petitioner, requiring the said petitioner to show by what authority he enjoys, exercises, and performs the functions, powers, and franchise of lieut. gov. of the said State.

That the said petitioner specially offered to the said rule nisi, and, in answer thereto, set forth and showed to the said court that, by reason of anything contained in the said information, he should not be required to show by what authority he exercises, enjoys, and performs the powers, duties, functions, and franchises of lieut. gov. of the said State, for

divers reasons and causes in the said answer specified, and for other reasons; and thereupon moved the said court to discharge the said rule nisi, and that the proceedings instituted in the said court by the said Almon R. Meek against the said petitioner by the said information and rule nisi be quashed.

Your petitioner further represents unto this honorable court that, among other reasons stated in the said answer to the said rule nisi, your petitioner set forth and stated that the said Almon R. Meek was not attorney general; that Harrison Reed had appointed the said Meek, attorney general, after the said Harrison Reed had been impeached by the assembly of the State of Florida, by virtue of the power
21 therein vested by the constitution of the said State, and was, therefore, under the said constitution and by the authority thereof, under arrest, and disqualified from performing any official power or duty until acquitted by the senate of the said State.

That the said Harrison Reed had caused the said proceedings to be instituted against the said petitioner for the purpose of revenge and malice against the said petitioner, as therein stated and appearing; that the said Reed urged the nomination and election of the said Gleason as lieut. gov. of the said State, and voted for his election, and had acquiesced in his election as valid; and that the said Reed had caused the said proceedings to be instituted for vindictive purposes after he had been impeached as aforesaid, and for the reason that the said Reed charged the said petitioner with having influenced his impeachment.

Your petitioner further represents that he alleged in the said answer that the public policy and interest of the said State did not require the action of the said court upon the case made by the said information; and that the said Almon R. Meek was not prosecuting the said petitioner as the legal attorney general of the said State.

That the said court had illegally granted leave to file the said information upon the said motion; that the said court had no jurisdiction over such proceedings as aforesaid against this petitioner as lieut. gov.; that if it had jurisdiction it would be an improper use of the powers of the said court to allow the proceedings aforesaid to proceed and be prosecuted against the said petitioner.

Your petitioner states that this honorable court held that the said information was legally instituted, and that the motives and purposes aforesaid of the prosecution against your petitioner could not be
22 inquired into; and thereby held that the same did not constitute any sufficient defense against the said information; and that the said court had jurisdiction over the said information.

Your petitioner further represents that the said information admits that this petitioner has been elected to the office of lieut. gov. by the people of the said State, and insists that he was not three years a citizen of the State when he was elected by the said people.

Your petitioner further shows to this court that the said question of ineligibility, stated in the said information, for want of three years' residence, was decided by the people in their sovereign capacity in the said election, and for that reason, which this honorable court should take judicial notice of, the said court should not have granted the said rule nor allowed the said proceedings to be prosecuted.

That the said court should have taken judicial notice of the fact that this court cannot, in the exercise of any constitutional power, call upon this petitioner to show his authority to act as lieut. gov., inasmuch as the said information admits that he was elected by the people of the said State, by which he is vested with his authority as lieut. gov.

Your petitioner further respectfully represents that there is no person in the State of Florida claiming the office of this petitioner, nor contesting his election; and that this said information is not prosecuted in the name, and by the authority, of the people of the said State, nor do they require, ask for, or demand the said prosecution.

Your petitioner further represents that he has been wronged and injured in the premises, and subjected to great expense in defending the said prosecution, instituted against him contrary to the constitutional and legal rights and privileges of this petitioner.

And this petitioner further represents to this court that he
23 has been denied justice in the premises, and that he has not been able to enforce his rights in said court, nor to secure to himself the full and equal benefit of the laws of this State and of the United States.

And your petitioner respectfully informs this honorable court that he does hereby remove the case made by the said information against this petitioner to the United States circuit court in and for the northern district of Florida, to be held at Tallahassee, in said State, in the exercise of his right under and in pursuance of the third section of an act of Congress of the United States entitled "An act to protect all persons in the United States in their civil rights, and furnish the means of their vindication;" and the fifth section of an act of Congress entitled "An act relating to habeas corpus, and regulating judicial proceedings in certain cases," approved March third, 1863; and the third, fourth, and fifth sections of an act of Congress entitled "An act to amend 'An act relating to habeas corpus, and regulating judicial proceedings in certain cases,'" approved March third, 1863, and approved May eleventh, A. D. 1866; and under all and every the sections and provisions of the said acts of Congress of the United States, and all other laws applicable thereto.

W. H. GLEASON.

Before me, Sherman Conant, United States com'r in and for the northern dist. of Florida, personally came William H. Gleason, the subscriber to the foregoing petition, who being by me first duly sworn, made oath that the statements contained in the said petition were true so far as the same are stated of his own knowledge, and that those matters stated on information and belief are true according to
24 the best of his knowledge, information, and belief.

SHERMAN CONANT,
U. S. Com'r.

Upon filing which petition, attorneys for respondent announced that they would not further defend the case.

Whereupon, it being the opinion of the court that the case before it was not referred to or embraced or covered by the acts of Congress referred to, or any other act of Congress, upon motion of the attorney general, argument upon the demurrer was heard.

Whereupon, upon considering the matters arising upon the demurrer of the respondent to the information filed herein by the said State of Florida by its said attorney general, it is ordered that the said demurrer is overruled, except so much of the first ground therein as relates to form, and as to the same, it is ordered, upon motion of the attorney general, that he have leave to amend the same instanter, so that the said information shall read, "In the name and by the authority of the State of Florida."

It is further ordered that the said respondent, William H. Gleason, have leave to plead over to the said information by Saturday, December 12th, 1868, at 10 o'clock a. m., or show cause at that time why final judgment of ouster should not be awarded against him.

It is further ordered that a copy hereof be served by the sheriff of this court upon the said William H. Gleason, the respondent.

And afterwards, to wit, on the ninth day of December, in the year A. D. 1868, a certified copy of said order was returned to the clerk's office of this court, endorsed as follows:

Executed the within by serving a true copy hereof on William
25 H. Gleason, this the 9th day of December, A. D. 1868.

C. J. PORTER,
Deputy Sheriff Supreme Court.

And afterwards, to wit, on the twelfth day of December, in the year of our Lord one thousand eight hundred and sixty-eight, appeared the respondent, by his counsel, in answer to the rule, and moved the court to enlarge and extend the rule to plead, or to show cause upon the ground that the amendment authorized to the information had been made.

Whereupon the attorney general, with leave of the court, filed his amendment, heretofore authorized, in the words and figures following, to wit:

In the supreme court of the State of Florida, at an extra and special term, December 5, 1868.

THE STATE OF FLORIDA, UPON THE RELATION of Almon R. Meek, who prosecutes in the name and by the authority of said State,
vs.
WILLIAM H. GLEASON, LIEUTENANT GOVERNOR of the State of Florida.

Information in the nature of quo warranto.

And now this day comes the said attorney general, who prosecutes in above-entitled cause in the name and by the authority of said State, and, pursuant to leave of said supreme court this day given,
26 amends the information heretofore filed by him in said cause, to wit, on the 8th day of November, 1868, by writing as a caption for said information the words, "In the name and by the authority of the State of Florida," so that said information shall read "In the name and by the authority of the State of Florida."

ALMON R. MEEK,
Attorney General.

Whereupon the rule was enlarged until three o'clock of this day, and respondent given until that time to answer the same.

Upon the arrival of that hour further time was granted until the fourteenth day of December, at ten o'clock a. m., to comply with said rule and to plead.

And afterwards, to wit, on the fourteenth day of December, in the year A. D. 1868, the respondent filed in the clerk's office of this court his answer to the rule aforesaid, in the words and figures following, to wit:

In the supreme court of Florida, at a special term in Dec., 1868.

THE STATE OF FLORIDA, UPON THE RELATION of the attorney gen'l,
vs.
WILLIAM H. GLEASON, LIEUT. GOV. OF THE State of Fla.

The respondent, William H. Gleason, lieut. gov., &c., protesting that this court has no jurisdiction to proceed further in this cause, since he has filed his petition for its removal to the circuit court of the United States for the northern district of Florida, as prescribed by the statutes of the United States; nevertheless, since this court has determined
27 to proceed herein, overruled respondent's demurrer, and granted leave to respondent to "show cause why final judgment of ouster should not be awarded against him," respondent shows cause as follows:

1st. Because, at the time of his election, as stated in said information, filed in this cause, he was not ineligible as in said information is alleged; and of this he puts himself upon the country.

2d. Because if respondent was ineligible at the time of his election, it was for the people, in the exercise of their sovereignty, to determine whether they would elect him or not, and no attorney general, or other servant, officer, or agent of the people, ought to be allowed to come into this court, and ask it to undo that which the people themselves have done in their sovereign capacity.

3d. Because, supposing respondent to have been ineligible, the "award of a final judgment of ouster against him" would not conduce to the public good nor be in accordance with the theory of our government that the people are supreme, and the court are invested with a sound discretion as to when they will "award a final judgment of ouster," even though they may have the power to do so.

4th. Because the election and eligibility of respondent are purely political questions over which the electing power should be allowed to have exclusive control, and with which the judicial department of the government should have nothing to do.

5th. Because, though it should be conceded that respondent was ineligible at the time of his election, it is not pretended that he is not eligible now; so that if eligibility be all that is wanted, no one can be found more eligible than respondent.

6th. Because no one is contesting with respondent for the office
28 of lieutenant governor, and as respondent is the sole choice of the people, that choice should be respected.

7th. Because, within less than a month from this date, the legislature of the State will be in session, and the constitution having vested in that body the power to remove respondent from office, it would be best to leave the question connected with this cause for the consideration of that high tribunal.

8th. Because respondent was not elected under the provisions of the State constitution which had not then been adopted, but under the reconstruction acts of Congress, and the orders of the commanding general, and an ordinance of the convention, neither of which prescribed any previous residence for those who should be elected at said election.

9th. Because at the time of respondent's election the government of the State of Florida was provisional only, and not a constitutional government.

10th. Because it was not intended by the makers of the constitution that the persons voting or elected at the first election should be subject to the provisions of the constitution; hence, though all men were allowed to vote by the constitution, all were not allowed to vote, but only those who could take a certain oath; and hence, also, though none by the constitution could hold office except registered voters, yet, in fact, at the first election not one of those elected was a registered voter within the meaning of the constitution; nor, indeed, could be, for the books of registration had not at that time been opened, nor officers appointed for that purpose.

11th. Because respondent was eligible under the acts of Congress, and the orders of the commanding general, and the ordinance of the constitutional convention, under which he was elected and the
29 provisional State government organized.

12th. Because the government of the State of Florida was "provisional only," and subject entirely to the will of Congress and the commanding general, until some time subsequent to the election and qualification of respondent as lieut. governor.

13th. Because Almon R. Meek, who files the information in this case, is not attorney general, as appears from a paper on file in this cause, under the great seal of the State, and attested by the secretary of state.

14th. Because if it be held that the residence of those who were appointed or elected to office at the first election, when the government was provisional only, must be in accordance with the requirement of the constitution, then the chief justice of this court was ineligible at the time of his appointment, he not having been a citizen of this State twelve months before his appointment, and not having been a registered voter at the time of his appointment, and therefore not capable of pronouncing a judgment of ouster in this cause.

15th. Because if during the provisional government of this State the requirements of the constitution as to eligibility must be complied with, then Associate Justice Hart is not a judge, he not having been a registered voter at the time of his appointment, and not therefore eligible, and not capable of pronouncing a judgment of ouster in this cause.

16th. Because this court has no original jurisdiction to award a final judgment of ouster in this cause.

17th. Because this cause cannot be decided without the intervention of a jury to determine the question of fact arising herein, and the constitution and laws of this State have not clothed this court with power to empannel a jury.

30 18th. Because it is manifest from the records in this cause, that this attempt to oust respondent from office is not because he is ineligible, but from some concealed motive; and this court should not lend itself to become the instrument of effecting the concealed purpose of any one.

Respondent, having fully shown cause, prays to be hence dismissed with his costs by him about his suit in this behalf expended.

W. H. GLEASON.

Sworn to and subscribed before me this 14th day of Dec., 1868.

CHS. KENMORE,
Dep. C. Sup. Court.

Upon filing which said answer, respondent entered of record his motion in this cause in the words and figures following, to wit:

THE STATE OF FLORIDA, ON THE RELATION of the att'y gen'l,
vs.
WILLIAM H. GLEASON.

Respondent moves the court for a continuance of the further hearing of this cause till the next regular term of this court, on the ground of the absence of his counsel, Hiram Bisbee, who is in attendance on the U. S. district court at Jacksonville, as stated in the affidavit of respondent, this day filed herein.

Which motion was overruled and denied.

And upon the same day came the attorney general and, in behalf of the State of Florida, entered his certain motion in this behalf, in the words and figures following, to wit:

Supreme court of the State of Florida, at an extra and special term, Dec. 14, 1868.

31 THE STATE OF FLORIDA, UPON THE RELATION of the attorney general of said State, who prosecutes in the name and by the authority of said State,
vs.
WILLIAM H. GLEASON, LIEUTENANT GOVERNOR of said State.

Information in the nature of a quo warranto.

And now comes the said attorney general, who prosecutes in the name and by the authority of said State, and moves the said supreme court to pronounce final judgment of ouster in said cause against the said respondent, said respondent having failed to plead to the information heretofore filed herein by said attorney general, or to show sufficient cause why said final judgment of ouster should not be awarded against him as required by the rule of said supreme court.

ALMON R. MEEK,
Attorney General of the State of Florida.

Whereupon it was considered by the court that the grounds set up in answer to the rules numbered, respectively, from two to eighteen, inclusive, being insufficient, and are overruled and stricken out, the ground stated in number thirteen being in point of fact incorrect, no such paper being on file in this cause, and the matters stated in the eighth, ninth, eleventh, and twelfth could have no possible bearing in the case; that respondent was called upon to show by what warrant he held
32 an office under the constitution of this State, created by the constitution, and by what authority he exercised an office existing under it alone.

It is further considered that the first ground set up, which to some extent partakes of the character of a plea, is insufficient, in that it tenders an issue of law, and is otherwise inadmissable in this action; and the court allows the respondent until three o'clock this afternoon to file an issuable plea, setting up matters of fact responsive to the information, the court also taking time to consider whether the first ground taken by the respondent, in which he places himself upon the country, which the court considers insufficient, shall require a demurrer or shall be overruled and set aside as insufficient.

And afterwards, to wit, at three o'clock in the afternoon of the fifteenth day of December, A. D. 1868—

Supreme court of the State of Florida, at an extra and special term.—December 15th, A. D. 1868.

THE STATE OF FLORIDA, UPON THE RELATION of the attorney general of said State, who prosecutes in the name and by the authority of said State,
vs.
WILLIAM H. GLEASON, LIEUTENANT GOVERNOR of said State.

The court, after considering the question reserved as to the first ground presented by respondent to the rule, adjudge that the same is insufficient as a plea, and doth overrule and strike out the same; and
33 the respondent having failed to file any plea as authorized and required by the court, it is now, on motion of the said attorney general of said State in this behalf for final judgment of ouster, considered by the court that the said William H. Gleason do not in any manner intermeddle or concern himself in and about the holding of or exercising the said office of lieutenant governor of the State of Florida in said information specified, but the said William H. Gleason be absolutely prejudged and excluded from holding or exercising the said office; and that the said State of Florida do recover costs, to be taxed by the clerk in this behalf, and the court imposes no fine in this behalf.

And after the rendition of the above judgment, to wit, on the 15th day of December, A. D. 1868, the respondent, by his counsel, filed with the chief justice of the said supreme court a petition and writ of error and citation in the words and figures following, to wit:

To the Hon. E. M. RANDALL, chief justice of the supreme court of the State of Florida:

The humble petition of William H. Gleason, lt. gov. of the State of Florida, respectfully showeth to your honor that recently, to wit, on the 18th day of November, 1868, an information in the nature of a quo warranto was filed against him by the State of Florida, on the relation of A. R. Meek, attorney general of said State, setting forth that your petitioner was not eligible to said office at the time of his election, because he had not been a citizen of said State three years before his election, as required by the constitution of said State.

Your petitioner further shows that in the progress of said cause, to wit, on the 5th day of December, 1868, among other things, said supreme court ordered that "respondent, William H. Gleason, have leave
34 to plead over to said information, by Saturday, December 12th, 1868, at 10 o'clock, or show cause at that time why final judgment of ouster should not be awarded against him;" that this leave was extended till December 14, 1868, when your petitioner showed cause, as he had leave to do in said order; that the chief cause shown by your petitioner was that he was elected and held his office by virtue and under authority of the reconstruction acts of Congress of the United States, and that he was eligible thereunder.

Your petitioner further shows that said honorable court decided adversely to the authority of your petitioner thus declared and set up under said acts of Congress, and proceeded to award a final judgment of ouster against your petitioner from said office of lt. governor.

Your petitioner desires now to have the construction given said acts of Congress by said hon. court reviewed by the Supreme Court of the United States, as he thinks he has a right to do, under the 25th sect. of the judiciary act of 1789.

Your petitioner, therefore, prays your honor to accept his bond, and sign the citation necessary in such cases, and do such other things as the law directs to enable your petitioner to take his writ of error to the Supreme Court of the U. States.

D. S. WALKER,
Att'y for Petitioner.

Writ of error to the Supreme Court.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the supreme court of the State of Florida, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said supreme court of the State
35 of Florida, before you, between the State of Florida, upon the relation of the attorney general, Almon R. Meek, who prosecutes in the name and by the authority of said State, and William H. Gleason, lieut. governor of the State of Florida, a manifest error hath happened, to the great damage of the said William H. Gleason, as by his complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday in December, in the year of our Lord one thousand eight hundred and sixty-nine, in the said Supreme Court to be then and there held, that, the records and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this fifteenth day of December, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the United States the ninety-third.

[SEAL.] SHERMAN CONANT,
Clk of said court.

United States of America to the State of Florida, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, D. C., on
36 the first Monday in December next, pursuant to writ of error filed in the clerk's office of the supreme court of the State of Florida, upon the relation of the attorney general, Almon R. Meek, who prosecutes in the name and by the authority of said State, wherein William H. Gleason, lieut. gov., is plaintiff, and the State of Florida, defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edwin M. Randall, chief justice of the supreme court of the State of Florida.

And after consideration of the said petition, the chief justice of the said supreme court caused to be filed in the papers of this cause a paper in the words and figures following, to wit:

In supreme court State of Florida.

THE STATE OF FLORIDA, ON THE INFORMATION of the attorney general of said State, *vs.* WILLIAM H. GLEASON. } Quo warranto.

This suit was commenced in this court and prosecuted by the attorney general of the State of Florida, and final judgment rendered on the fifteenth day of December, A. D. eighteen hundred and sixty-eight, ousting the respondent, William H. Gleason, from the office of lieutenant governor of said State, the said respondent having appeared herein and having failed to plead to the information filed by the attor-
37 ney general, or to show legal cause why judgment should not be rendered against him.

The respondent, now seeking to obtain a review and reversal of said judgment by the Supreme Court of the United States by writ of error, has applied to the chief justice of the supreme court of the State of Florida to sign the citation.

This the respondent is entitled to have done if the case is one of those mentioned in the twenty-fifth section of the act of Congress passed September twenty-fourth, seventeen hundred and eighty-nine, relating to writs of error, but if the case is not one of that class, then the respondent is not entitled to the review sought, and I have no legal authority to sign the citation, and, if signed, would be of no effect.

The constitution of this State requires that the governor and lieutenant governor shall have been "three years a citizen of the State of Florida next preceding the time of his election." (Art. V, sec. 3 and sec. 14.)

The information charges that at the time of his election the respondent had not been a citizen of the State for three years, and therefore is not entitled to hold the office.

Under an order to plead to or to show cause why judgment of ouster should not be rendered against him, the respondent, by way of showing cause, alleged that he was elected to said office in May, 1868, at the same time that an election was held under the reconstruction acts of Congress upon the question of the adoption of the constitution; that the election at the same time for State officers was held in pursuance of an ordinance of the constitutional convention and the reconstruction acts and an order of the commanding general of this military district;
38 that he was then elected lieutenant governor; and because the government formed upon the adoption of the constitution was "provisional only," and the constitutional requirement as to eligibility not being in force at the time the election was held, the constitution not yet being adopted, that he was eligible to said office under the said acts of Congress.

The respondent was sworn into office in July, A. D. 1868, after the passage of the act of Congress, admitting the States of Georgia, Florida, and other hitherto disorganized States, to representation in Congress, and after the commanding general had surrendered the government of this State into the hands of Gov. Reed, who had been sworn

into office on the 8th day of June, when the legislature met and organized.

The election was held for the purpose of filling the offices created and provided for in and by the constitution. The duties of those officers so elected were provided and prescribed in the constitution.

The persons elected could hold the offices provided in the instrument and no others. Their right to hold the offices depended upon the adoption of the constitution, which was offered for the acceptance of the people at the same election. They were elected to hold such offices as they might be permitted to hold by the terms of the constitution. They are thereby required to take an oath of office, in which they must swear that they are "entitled to hold office under this constitution."

It permitted certain persons to hold office, and prohibited certain other persons from so doing.

Its provisions became operative (so far as it was possible to become so without legislation) the moment it was adopted by the people and endorsed by Congress. If its prohibitions in one respect were inoperative, they were equally inoperative in other respects, except where legislation was contemplated to give them effect. It is demanded,
39 in effect, that we should give such a construction to the law as that the qualifications of the officers first elected were prescribed by the reconstruction acts, but it is shown that these acts only contained a single restrictive provision, and that by the terms of the acts themselves they ceased to have any operation the moment the State constitution was infused with the breath of life.

The supreme court, in deciding that the cause shown why judgment of ouster should not be rendered was insufficient, determined that the right to hold the office depended upon the qualifications prescribed in the fundamental law, under which the respondent claimed to hold, and without which fundamental law the office itself did not exist. By failing to assert his right to the office in the only manner known to the law, a judgment of ouster was rendered, and in rendering such judgment it is not yet discovered in what particular there is "drawn in question the validity of any treaty, or of any statute of, or an authority exercised under, the United States, or that the decision is against the validity" of either; nor in what particular "is drawn in question the validity of a statute of or an authority exercised under, any State, on the grounds of their being repugnant to the Constitution, treaties, or laws of the United States, and that the decision is in favor of such their validity;" nor in what particular "is drawn in question the construction of any clause of the Constitution, or of a treaty or statute of, or commission held under, the United States, and the decision is against the title, right, privilege, or exemption specially set up or claimed by either party under such clause of the said Constitution, treaty, statute, or commission."

For the respondent does not "claim" that he holds the office
40 under any clause of the Constitution or any statute of the United States, such being offices of the United States, and not offices of this State. He claims to hold a State office on the ground that the laws of Congress did not prohibit him from holding it, and seeks to ignore the constitutional requisites.

The supreme court has not denied his right, title, or privilege under an act of Congress, nor questioned his right to hold any office conferred upon him thereunder; but the court has denied his right to hold the office of lieutenant governor under the provisions of the constitution of this State, not conflicting in any wise with any act of Congress, treaty,

or provision of the Constitution of the United States; it being conceded that he was elected to the office in question, but as it stands confessed of record that he was not eligible to fill the office under the constitution of this State, the court could not otherwise decide.

The Supreme Court of the United States holds as follows: It is sufficient, if it appears from the record that an act of Congress was applicable to the case, and was misconstrued, or the decision in the State court was against the privilege or exemption specially set up under such a statute, to bring the case within the provisions of the 25th section of the act. (6 Peters, 48.)

It must be shown on the record that such a question did arise, and was applied by the State court. (10 Peters, 369.)

The only question is whether the record shows that the Constitution or treaty or a law of the United States has been violated by the decision of the court. (9 Peters, 224.)

It is sufficient to bring the case within the provisions of the act if the record shows that the Constitution or laws of the United
41 States must have been misconstrued or the decision could not have been made. (2 Peters, 245, 380; 3 do., 302.)

As I do not conceive that any question has arisen in this case, or been decided by the supreme court of this State, within the provision of the act of Congress, I cannot sign the citation.

December 16th, 1868.

E. M. RANDALL,
Ch. Justice Sup. Court Florida.

I, Charles H. Foster, clerk of the supreme court of the State of Florida, do certify that the above and foregoing thirty-four pages do contain a true and perfect transcript of the record on file in my office in the case of the State of Florida, upon the relation of the attorney general, vs. William H. Gleason, lieutenant governor of the State of Florida.

In witness whereof, I have hereunto set my hand and affixed the seal of said court this the fifteenth day of November, A. D. one thousand eight hundred and sixty-nine.

[SEAL.]

CHAS. H. FOSTER,
Clerk of Supreme Court State of Florida.

(Indorsed:) In supreme court State of Florida. The State of Florida, upon the relation of the attorney general, vs. William H. Gleason, lieut. governor of the State of Florida. Record.

(Indorsement on record:) Florida sup. court. No. 339. William H. Gleason, lieut. governor of the State of Florida, plaintiff in error, vs. the State of Florida, ex rel. the attorney general.

Filed 10th December, 1869.